

In the Matter of the Last Will and Testament of H. A. EVATT,
Deceased.

1897.
July 1 and 6

D. C., Kandy, 1,998.

*Stamp duty on probate of will of person who held property only as trustee—
Stamp Ordinance of 1890, s. 28.*

Where a person dies leaving property which he held only as trustee, probate of his will or letters of administration of his estate, as the case may be, need not be stamped.

THE facts of the case appear in the judgments.

Van Langenberg, for appellant.

Wendt, Acting S.-G., for respondent.

6th July, 1897. LAWRIE, A.C.J.

The deceased Mr. Evatt died in England possessed of personal estate there and of trust property in Ceylon. His executrix got

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probate of his will in England and administered his estate there. She has been advised that it is necessary that she should get administration (with the will annexed) in Ceylon, for the purpose of transferring title to the trust property here. Letters have been granted, and the question is whether these may be issued unstamped, or whether they should bear stamp duty appropriate to the value of the trust estate. The words of the Stamp Ordinance are clear. Duty shall be levied on the estate of the deceased "exclusive of what the deceased shall "have been possessed of or entitled to as trustee for any other "person or persons and not beneficially." It was argued that this does not apply when the sole object of getting administration is to give a title to transfer trust property. I am unable to appreciate the argument. The words of the Ordinance seem to be conclusive. It may be that the Stamp Ordinance does not contemplate nor provide for a case when the deceased had no property of his own. When administration is sought only to administer trust property, the case may be a *casus improvisus*. But if it be, the letters are exempt from stamp duty, which is only exigible when clearly imposed.

WITHERS, J.—

Mr. Evatt was one of the original trustees of the will of General Frazer, who died in 1862. In the course of time Mr. Evatt's co-trustees died, and Mr. Evatt was minded to appoint a trustee jointly with himself. A part of the trust estate was a property situate in Ceylon. Evatt, it seems, omitted to execute a conveyance of this property to the new trustee in the way that our law requires for the transfer of immovable property. He died without doing so, and the executrix of his estate applied for letters of administration in Ceylon for the purpose of transferring the title in the Ceylon property to the trustee appointed by the late Mr. Evatt. On her application this Court appointed the District Court of Kandy as the one to which the executrix should apply for a grant limited to this special purpose. In these circumstances, the question arises for decision whether the grant should bear a stamp duty proportionate to the value of the property. The Stamp Ordinance of 1890, section 24, enacts as follows: "No court in this island shall grant probate or letters "of administration of the property and estate of any deceased "person, without first requiring and receiving from the person or "persons applying for the same, or from some other competent "person or persons, an affidavit that the movable and immovable "property and estate of the deceased in this island, for or in

“ respect of which probate or letters of administration are to be granted, exclusive of what the deceased shall have been possessed of or entitled to as a trustee, and not beneficially, and without deducting anything on account of the debts due and owing from the deceased (excepting debts due on mortgage or on notarial bonds), are of the value of a certain sum, to be therein specified to the best of deponent’s knowledge, information, and belief, in order that the proper and full stamp duty may be paid by the person to whom such probate or letters of administration shall be granted.”

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I presume in this case that the Court was satisfied by affidavit that Mr. Evatt had no estate in Ceylon when he died, except this trust property. By section 539 of the Civil Procedure Code a District Court may grant probate or administration limited to any particular property or for any particular purpose in any case where it considers that a large grant is unnecessary. By the English Statute (48 George III., chap. 49, section 35) it is enacted that “ the probate of a will of any person deceased or the letters of administration shall be deemed to be taken to be valid and available by the executors or administrators of the deceased for recovering, transferring, or assigning any debt or debts or other personal estate or effects whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such debt or debts or other person’s estate or effects, or the amount or value of so much thereof, or such interest therein as was trust property in the deceased (as the case may be) shall not be included in the amount or value of the estate in respect of which the stamp duty was paid on such probate or letters.” Now, in Ceylon an executor or administrator has the same power to deal with real estate as in England he has to deal with personal estate. But as executrix in England, this lady has no power to transfer immovable property in Ceylon. She was obliged to come to the local courts in Ceylon to be clothed with power to assign this property to her testator’s joint trustee, so as to give him, what he has not at the present moment, a legal title to the property. It seems to me contrary to the letter and spirit of the law that duty should be paid for this grant on Mr. Evatt’s trust estate in Ceylon. The appeal is in my opinion entitled to succeed.
